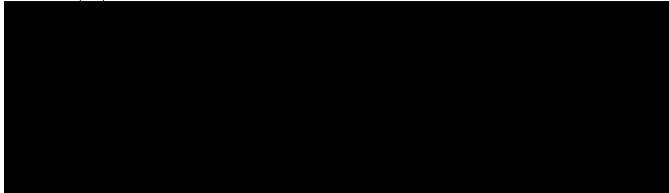




U.S. Department of Justice

Immigration and Naturalization Service

OFFICE OF ADMINISTRATIVE APPEALS
425 Eye Street N.W.
ULLB, 3rd Floor
Washington, D.C. 20536



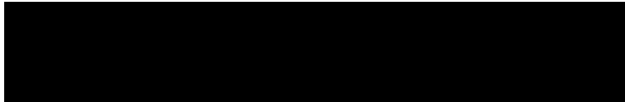
CA

File: EAC-99-220-53737 Office: Vermont Service Center

Date:

DEC 4 2000

IN RE: Petitioner:
Beneficiary:



Petition: Petition for Special Immigrant Religious Worker Pursuant to Section 203(b)(4) of the Immigration and Nationality Act, 8 U.S.C. 1153(b)(4)

IN BEHALF OF PETITIONER: Self-represented

Public Copy

INSTRUCTIONS:

This is the decision in your case. All documents have been returned to the office which originally decided your case. Any further inquiry must be made to that office.

If you believe the law was inappropriately applied or the analysis used in reaching the decision was inconsistent with the information provided or with precedent decisions, you may file a motion to reconsider. Such a motion must state the reasons for reconsideration and be supported by any pertinent precedent decisions. Any motion to reconsider must be filed within 30 days of the decision that the motion seeks to reconsider, as required under 8 C.F.R. 103.5(a)(1)(i).

If you have new or additional information which you wish to have considered, you may file a motion to reopen. Such a motion must state the new facts to be proved at the reopened proceeding and be supported by affidavits or other documentary evidence. Any motion to reopen must be filed within 30 days of the decision that the motion seeks to reopen, except that failure to file before this period expires may be excused in the discretion of the Service where it is demonstrated that the delay was reasonable and beyond the control of the applicant or petitioner. Id.

Any motion must be filed with the office which originally decided your case along with a fee of \$110 as required under 8 C.F.R. 103.7.

FOR THE ASSOCIATE COMMISSIONER,
EXAMINATIONS

Mary C. Mulrean, Acting Director
Administrative Appeals Office

Identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy

DISCUSSION: The immigrant visa petition was denied by the Director, Vermont Service Center. The matter is now before the Associate Commissioner for Examinations on appeal. The appeal will be dismissed.

The petitioner seeks classification of the beneficiary as a special immigrant religious worker pursuant to section 203(b)(4) of the Immigration and Nationality Act (the Act), 8 U.S.C. 1153(b)(4), to serve as an associate pastor. The director denied the petition determining that the petitioner had failed to establish that it is a qualifying, tax-exempt religious organization. The director also found that the petitioner had failed to establish that the prospective occupation is a religious occupation or that the beneficiary had two years of continuous religious work experience. Further, the director found that the petitioner had failed to establish its ability to pay the proffered wage.

On appeal, dated August 12, 2000, the petitioner argued that the beneficiary is eligible for the benefit sought. The petitioner indicated that additional information would be submitted within 30 days. As of this date, over three months later, no additional evidence has been submitted by the petitioner.

Section 203(b)(4) of the Act provides classification to qualified special immigrant religious workers as described in section 101(a)(27)(C) of the Act, 8 U.S.C. 1101(a)(27)(C), which pertains to an immigrant who:

- (i) for at least 2 years immediately preceding the time of application for admission, has been a member of a religious denomination having a bona fide nonprofit, religious organization in the United States;

- (ii) seeks to enter the United States--

- (I) solely for the purpose of carrying on the vocation of a minister of that religious denomination,

- (II) before October 1, 2003, in order to work for the organization at the request of the organization in a professional capacity in a religious vocation or occupation, or

- (III) before October 1, 2003, in order to work for the organization (or for a bona fide organization which is affiliated with the religious denomination and is exempt from taxation as an organization described in section 501(c)(3) of the Internal Code of 1986) at the request of the organization in a religious vocation or occupation; and

(iii) has been carrying on such vocation, professional work, or other work continuously for at least the 2-year period described in clause (i).

The beneficiary is a forty-six-year-old single female native and citizen of Grenada. The petitioner indicated that the beneficiary entered the United States in an undisclosed manner on October 2, 1990 and that her authorized period of admission expired on April 1, 1991.

The first issue to be examined is whether the petitioning organization meets the requirements of 8 C.F.R. 204.5(m)(3), which in pertinent part, states that each petition for a religious worker must be accompanied by:

(i) Evidence that the organization qualifies as a nonprofit organization in the form of either:

(A) Documentation showing that it is exempt from taxation in accordance with section 501(c)(3) of the Internal Revenue Code of 1986 as it relates to religious organizations (in appropriate cases, evidence of the organizations's assets and methods of operation and the organization's papers of incorporation under applicable state law may be requested); or

(B) Such documentation as is required by the Internal Revenue Service to establish eligibility for exemption under section 501(c)(3) of the Internal Revenue Code of 1986 as it relates to religious organizations...

The petitioner submitted a letter dated January 20, 1999 from the Internal Revenue Service ("IRS"). This letter indicated that the Sound From Glory Tabernacle was a religious organization; however, it was not addressed to the petitioner's address. The letter did provide an employer's identification number. The petitioner also submitted a photocopy of its articles of incorporation which list the address typed on the January 20, 1999 IRS letter. On February 17, 2000, the director requested that the petitioner submit evidence of its tax-exempt status. In response, the petitioner submitted a photocopy of the January 20, 1999 IRS letter. On appeal, the petitioner submitted photocopies of 1997 and 1998 Forms W-2 issued by it. The employer's identification number is the same as the one on the January 20, 1999 IRS letter. The evidence submitted in support of this petition does indicate that the petitioner has been granted an exemption by the IRS. As such, the petitioner has met the requirements at 8 C.F.R. 204.5(m)(3).

The next issue to be examined is whether the prospective occupation is a religious occupation.

8 C.F.R. 204.5(m)(2) states, in pertinent part, that:

Religious occupation means an activity which relates to a traditional religious function. Examples of individuals in religious occupations include, but are not limited to, liturgical workers, religious instructors, religious counselors, cantors, catechists, workers in religious hospitals or religious health care facilities, missionaries, religious translators, or religious broadcasters. This group does not include janitors, maintenance workers, clerks, fund raisers, or persons solely involved in the solicitation of donations.

The regulation does not define the term "traditional religious function" and instead provides only a brief list of examples. The examples listed reflect that not all employees of a religious organization are considered to be engaged in a religious occupation. The regulation states that positions such as cantor, missionary, or religious instructor are examples of qualifying religious occupations. Persons in such positions must complete prescribed courses of training established by the governing body of the denomination and their services are directly related to the creed of the denomination. The regulation reflects that nonqualifying positions are those whose duties are primarily administrative, humanitarian, or secular. Persons in such positions must be qualified in their occupation, but they require no specific religious training or theological education.

The Service therefore interprets the term "traditional religious function" to require a demonstration that the duties of the position are directly related to the religious creed of the denomination, that specific prescribed religious training or theological education is required, that the position is defined and recognized by the governing body of the denomination, and that the position is traditionally a permanent, full-time, salaried occupation within the denomination.

In a letter dated June 7, 1999, the petitioner stated that the beneficiary "would preach, teach, perform weddings, dedicate babies, visit the sick and perform funeral services." The petitioner submitted a photocopy of its by-laws which indicate that an assistant pastor:

will be supportive and loyal to the senior pastor or, if unable to do so, will seek another place of service . . .
. will be supportive and loyal to my fellow staff ministers, never criticizing them or undermining their

ministry . . . will recognize [her] role and responsibility on the church staff and will not feel threatened or in competition with any other minister, deacon or board member of the church . . . will maintain good relationships with other ministers of my special area of ministry.

These by-laws did not provide any description of the duties for an "associate pastor."

On February 17, 2000, the director requested that the petitioner submit additional information. In response, the petitioner listed the beneficiary's duties as follows:

1. To preach the Word of God to the congregation.
2. To counsel and give spiritual guidance to all the young people of the church.
3. To plan and preach at Evangelistic meetings every Sunday night.
4. To lead in devotions every Sunday morning.
5. To teach Bible Study to the congregation.
6. To perform ceremonies such as weddings, dedication of babies and funeral services.

The petitioner indicated that the beneficiary attended Bible college from 1993 to 1996. The petitioner submitted a photocopy of the beneficiary's diploma from the Bible College of the Pentecostal Association of North America awarded on June 19, 1996 and a photocopy of the beneficiary's certificate of ordination awarded on March 13, 1996.

On appeal, the petitioner submitted a photocopy of the beneficiary's transcript from the Bible college. The evidence submitted in support of this petition does not establish that the prospective occupation is a religious occupation. While the by-laws of the church indicate that an assistant pastor primarily assists the pastor, these by-laws do not provide any responsibilities of an "associate pastor." It, therefore, appears that the prospective occupation is not traditionally a full-time, salaried position within the denomination. Also, the petitioner has not described what was required of the beneficiary prior to receiving her certificate of ordination. As this certificate was awarded prior to the beneficiary's graduation from Bible college, it does not appear that a theological education was a prerequisite. The simple issuance of a document entitled "certificate of ordination," which is not based on specific theological training or education, does not prove that an alien is qualified to perform the duties of a minister or pastor. See Matter of Rhee, 16 I&N Dec. 607, 610 (BIA 1978). As such, the petitioner has failed to

establish that the prospective occupation is a religious occupation.

The next issue to be examined is whether the petitioner has established that the beneficiary had two years of continuous work experience in the proffered position.

8 C.F.R. 204.5(m)(1) states, in pertinent part, that:

All three types of religious workers must have been performing the vocation, professional work, or other work continuously (either abroad or in the United States) for at least the two year period immediately preceding the filing of the petition.

The petition was filed on July 14, 1999. Therefore, the petitioner must establish that the beneficiary had been continuously working in the prospective occupation for at least the two years from July 14, 1997 to July 14, 1999.

In a letter dated June 7, 1999, the petitioner stated that "in March 1996, [the beneficiary] was ordained as a full time minister and since that time she has pastored in Sound From Glory Tabernacle, Inc." On February 17, 2000, the director requested that the petitioner submit evidence of the beneficiary's work experience during the two-year period prior to filing. In response, the petitioner stated that the beneficiary's "appointment began on February 1, 1997 her office was Assistant Pastor. After this two-year period the board promoted her to the office of Associate Pastor . . . Her salary now is \$400.00 weekly." The petitioner indicated that it was "unable to find pay receipts for all two years. However, we have enclosed the pay receipts that [the beneficiary] had in her possession." The petitioner submitted sheets of paper that purport to show the beneficiary's weekly earnings. According to these earnings statements, the beneficiary earned \$350.00 each week, had \$10.15 in federal income tax withheld each week, had \$21.70 in social security tax withheld each week, and had \$5.07 in medicare tax withheld each week.

On appeal, the petitioner indicated that it "enclosed a copy of [the beneficiary's] W2 forms, which proves that she was paid from 1997 to the end of 1999." The petitioner submitted a photocopied 1997 Form W-2 issued by it to the beneficiary and a photocopied 1999 Form W-2c issued by it to the beneficiary. The petitioner also submitted a photocopied 1998 Form W-2 issued by it to Monica Brathwaite.

The evidence submitted in support of this petition does not convincingly document the beneficiary's two years of continuous religious work experience. According to the 1997 Form W-2 and 1999

Form W-2c, the beneficiary did not have any federal income tax withheld from her salary. This is in direct contradiction to the previously-submitted earnings statements. According to these statements, the beneficiary had \$527.80 withheld over the course of a year. Also, the earnings statements indicate that the beneficiary had \$1,128.40 withheld in social security tax each year; however, the Forms W-2 indicate that she had \$2,256.80 withheld. Further, the earnings statements indicate that the beneficiary had \$263.64 withheld in medicare tax each year; however, the Forms W-2 indicate that she had \$527.80 withheld. Moreover, the earnings statements and the petitioner indicated that the beneficiary received \$350.00 a week, or \$18,200.00 a year. The 1997 Form W-2 did indicate that the beneficiary received a salary of \$18,200.00 that year; however, the petitioner indicated that it hired the beneficiary on February 1, 1997. Thus, it is not clear how the beneficiary received a full year's pay when she did not begin her purported employment until one month into the year. It is incumbent upon the petitioner to resolve any inconsistencies in the record by independent objective evidence. Matter of Ho, 19 I&N Dec. 582 (BIA 1988). It must further be noted that these Forms W-2 could have been prepared at any time and there is no evidence that they were ever submitted to the IRS or that the beneficiary ever actually filed tax returns.

The petitioner has not established that the beneficiary was continuously engaged in a religious occupation from July 14, 1997 to July 14, 1999. The objection of the director has not been overcome on appeal. Accordingly, the petition may not be approved.

The next issue to be examined is whether the petitioner has the ability to pay the proffered wage.

8 C.F.R. 204.5(g)(2) states, in pertinent part:

Ability of prospective employer to pay wage. Any petition filed by or for an employment-based immigrant which requires an offer of employment must be accompanied by evidence that the prospective United States employer has the ability to pay the proffered wage . . . Evidence of this ability shall be either in the form of copies of annual reports, federal tax returns, or audited financial statements.

The petitioner indicated that it will pay the beneficiary a weekly salary of \$400.00 (approximately \$20,800.00 annually). On February 17, 2000, the director requested that the petitioner submit evidence of its ability to pay this salary. In response, the petitioner submitted an audited financial statement for the years ended December 31, 1998 and 1999. These statements indicated that the petitioner had a cash balance of \$241,409.37 at the end of

1998 and a cash balance of \$406,675.57 at the end of 1999. Thus, the evidence submitted in support of this petition does appear to support the petitioner's claim that it has the ability to pay the beneficiary an annual salary of \$20,800.00.

The burden of proof in these proceedings rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. 1361. The petitioner has not sustained that burden.

ORDER: The appeal is dismissed.